

1 HOUSE BILL NO. 67

2 INTRODUCED BY L. JONES

3 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COMMUNITY COLLEGE FUNDING
 6 LAWS; ESTABLISHING A BASE PLUS FORMULA THAT IS ADJUSTED FOR ACTUAL FTE IN WEIGHTED
 7 CATEGORIES TO BE USED BEGINNING WITH THE 2025 BIENNIUM; PROVIDING DEFINITIONS;
 8 ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND PROVIDING A STATUTORY
 9 APPROPRIATION; AMENDING SECTIONS 17-7-142, 17-7-502, 20-15-309, 20-15-310, AND 20-15-312, MCA;
 10 AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
 14 **Section 1.** Section 17-7-142, MCA, is amended to read:

15 **"17-7-142. Calculation of reversions for funded resident enrollment growth in Montana**
 16 **university system and community colleges.** (1) The reversion calculation in this section is effective only in
 17 those years when the legislature funds resident enrollment growth based ~~upon~~ on resident enrollment
 18 projections and requires a reversion by the Montana university system ~~or a community college~~ if the resident
 19 enrollment projections are not met.

20 (2) The reversion must be calculated based ~~upon~~ on the marginal funding for each resident FTE
 21 identified in the general appropriations act.

22 (3) The total reversion is calculated based ~~upon~~ on the difference between the FTE resident
 23 enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the
 24 prior 3-year average FTE resident enrollment, whichever is lower."

25
 26 **SECTION 2.** SECTION 17-7-142, MCA, IS AMENDED TO READ:

27 **"17-7-142. Calculation of reversions and fees for funded resident enrollment growth in**
 28 **Montana university system and community colleges.** (1) The reversion calculation in this section is effective

1 only in those years when the legislature funds resident enrollment growth based ~~upon~~on resident enrollment
 2 projections and requires a reversion by the Montana university system or a community college if the resident
 3 enrollment projections are not met.

4 (2) The reversion must be calculated based ~~upon~~on the marginal funding for each resident FTE
 5 identified in the general appropriations act.

6 (3) The total reversion is calculated based ~~upon~~on the difference between the FTE resident
 7 enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the
 8 prior 3-year average FTE resident enrollment, whichever is lower.

9 (4) For a community college, any difference calculated under subsection (3) must be paid as a fee to
 10 the community college FTE adjustment account established in [section 6]."
 11

12 **Section 3.** Section 17-7-502, MCA, is amended to read:

13 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 14 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
 15 the need for a biennial legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with
 17 both of the following provisions:

18 (a) The law containing the statutory authority must be listed in subsection (3).

19 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 20 statutory appropriation is made as provided in this section.

21 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-
 22 407; 5-13-403; 5-13-404; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310;
 23 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-31-1004; 15-31-1005; 15-35-108;
 24 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-
 25 106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410;
 26 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-
 27 107; 20-9-534; 20-9-622; 20-9-905; [section 5 6]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-
 28 1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-

1 113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-
2 113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-
3 1108; 75-6-214; 75-11-313; 75-26-308; 76-13-151; 76-13-150; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-
4 2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-
5 526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

6 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
7 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
8 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
9 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined
10 by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have
11 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
12 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
13 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
14 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
15 benefit provided by 19-6-709; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion
16 of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115
17 terminates June 30, 2021; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
18 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
19 terminates June 30, 2025; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates
20 December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023;
21 pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to
22 sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L.
23 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the
24 inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017,
25 the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-
26 103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-209 terminates
27 September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029;
28 pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027;

1 pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; and pursuant to sec. 5,
2 Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023.)"

3

4 **Section 4.** Section 20-15-309, MCA, is amended to read:

5 **"20-15-309. ~~Proposed budget~~ Biennial budgeting.** The board of trustees of a community college
6 district shall submit ~~a proposed budget enrollment projections and other data necessary for calculating the state~~
7 appropriation under 20-15-310 to the board of regents by August 15 ~~1~~ immediately preceding each regular
8 legislative session. ~~The proposed budget shall be for the next biennium and in a form approved by the state~~
9 ~~budget director and the commissioner of higher education and shall be calculated in the same manner as the~~
10 ~~operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its~~
11 ~~components and make any changes it determines necessary.~~ By the following September 1, the board of
12 regents shall submit its proposal for funding the community colleges to the budget director and the legislative
13 fiscal analyst."

14

15 **Section 5.** Section 20-15-310, MCA, is amended to read:

16 **"20-15-310. Appropriation -- definitions.** (1) As used in [section 5 6] and this section, the following
17 definitions apply:

18 (a) "Adjusted base" means the state appropriation to a community college in the base year minus any
19 one-time-only legislative appropriations and appropriations for auditing purposes, as well as any reversion
20 pursuant to 17-7-142 before July 1, 2023, and adjusted for actual weighted FTE as described in [section 5 6],
21 then multiplied by the inflationary factor for the second year of the current biennium.

22 (b) "Base year" means the first year of the current biennium.

23 (c) "Concurrent enrollment" means the form of dual enrollment through which a high school student
24 receives instruction in a community college course from a high school instructor.

25 (d) "CTE FTE" means the FTE derived from students in courses determined by the commissioner of
26 higher education to be career and technical education, based on national standard course classifications. For
27 the purposes of the community college funding formula, FTE generated from a dual enrollment CTE course
28 must be included in the calculation of CTE FTE and not in the concurrent enrollment or early college FTE

1 categories.

2 (e) "Dual enrollment" means the circumstance in which a high school student is enrolled in both the
3 student's high school and in a community college.

4 (f) "Early college" means the form of dual enrollment through which a high school student receives
5 instruction in a community college course from a faculty member of the community college.

6 (g) "FTE" or "full-time equivalent" means the total number of undergraduate resident student credit
7 hours in an academic year divided by 30.

8 (h) "FTE categories" means CTE FTE, general education FTE, the FTE derived from concurrent
9 enrollment, and the FTE derived from early college. For the purposes of the community college funding formula,
10 FTE generated from a dual enrollment CTE course must be included in the calculation of CTE FTE and not in
11 the concurrent enrollment or early college FTE categories.

12 (i) "FTE decrease funding factor" means a dollar figure for each year of the ensuing biennium that is
13 determined by the legislature and must be specified in the appropriations act appropriating funds to the
14 community colleges for each biennium.

15 (j) "FTE increase funding factor" means a dollar figure for each year of the ensuing biennium that is
16 determined by the legislature and must be specified in the appropriations act appropriating funds to the
17 community colleges for each biennium.

18 (k) "FTE weighting factor" means a multiplier that is applied to changes in resident FTE in each of the
19 FTE categories and that is determined by the legislature and must be specified in the appropriations act
20 appropriating funds to the community colleges for each biennium.

21 (l) "General education FTE" means the FTE derived from non-dual-enrollment students in courses
22 determined by the commissioner of higher education to not be career and technical education, based on
23 national standard course classifications.

24 (m) "Inflationary factor" means the percentage calculated pursuant to 20-9-326, not to exceed 3% and
25 subject to final determination by the legislature as specified in the appropriations act appropriating funds to the
26 community colleges for each biennium.

27 (n) "Weighted FTE" means the sum of the FTE in each FTE category multiplied by the corresponding
28 FTE weighting factor.

1 ~~(4)~~ (2) It is the intent of the legislature that all community college spending, other than from restricted
 2 funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this
 3 part and the state general appropriations act.

4 ~~(2)~~ (3) ~~(a)~~—The state general fund appropriation for each community college must be determined as
 5 follows:

6 (a) For the first year of the next biennium, multiply the adjusted base by the inflationary factor for the
 7 first year of the next biennium, and to this number add the result of multiplying:

8 (i) any change in the projected weighted resident FTE changes for the first year of the next biennium
 9 from the actual weighted resident FTE in the base year; and

10 (ii) the FTE decrease funding factor or the FTE increase funding factor as appropriate for the first year
 11 of the next biennium.

12 (b) For the second year of the next biennium, multiply the adjusted base by the inflationary factor for
 13 the first year of the next biennium, multiply this result by the inflationary factor for the second year of the next
 14 biennium, and to this number add the result of multiplying:

15 (i) any change in the projected weighted resident FTE changes for the second year of the next
 16 biennium from the actual weighted resident FTE in the base year; and

17 (ii) the FTE decrease funding factor or the FTE increase funding factor as appropriate for the second
 18 year of the next biennium.

19 ~~(i) multiply the variable cost of education per student by the full-time equivalent student count and add~~
 20 ~~the budget amount for the fixed cost of education; and~~

21 ~~(ii) multiply the total in subsection (2)(a)(i) by the state share.~~

22 ~~(b) The variable cost of education per student, the budget amount for fixed costs, and the state share~~
 23 ~~for each community college must be determined by the legislature. The state share for each community college,~~
 24 ~~expressed as a percentage, and the variable cost of education per student must be specified in the~~
 25 ~~appropriations act appropriating funds to the community colleges for each biennium.~~

26 ~~(3) Except as provided in subsection (4), the state general fund appropriation for each full-time~~
 27 ~~equivalent resident student at a community college may not exceed the weighted average of state support per~~
 28 ~~resident full-time equivalent student among community colleges and 2-year and 4-year campuses of the~~

1 ~~Montana university system in the most recent year plus an amount equal to two standard deviations of the most~~
2 ~~recent 6 years of weighted averages of state support per resident full-time equivalent student among~~
3 ~~community colleges and 2-year and 4-year campuses of the Montana university system.~~

4 ~~(4) If enrollment for a community college is less than 200 full-time equivalent resident students for 2~~
5 ~~consecutive fiscal years, the maximum state general fund appropriation in the subsequent fiscal year for that~~
6 ~~community college may not exceed the lesser of:~~

7 ~~(a) the weighted average of state support per resident full-time equivalent student within the Montana~~
8 ~~university system; or~~

9 ~~(b) the weighted average of state support per resident full-time equivalent student within the~~
10 ~~community college system.~~

11 ~~(5) At any time enrollment at a community college falls below 200 full-time equivalent resident~~
12 ~~students, the community college shall submit a business plan to the board of regents for review, approval, and~~
13 ~~monitoring. The business plan must include identifying what measures the community college will take to~~
14 ~~increase enrollment. The plan must be submitted to the board of regents within 1 month after enrollment falls~~
15 ~~below 200 full-time equivalent resident students.~~

16 ~~(6) The student count may not include those enrolled in community service courses as defined by the~~
17 ~~board of regents.~~

18 ~~(7) As used in this section, the following definitions apply:~~

19 ~~(a) "Adjusted cost of education" means the cost of education minus any reversion calculated~~
20 ~~under 17-7-142, expenditures from one-time-only legislative appropriations, and expenditures funded by local~~
21 ~~mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels.~~

22 ~~(b) "Cost of education" means the actual costs incurred by the community colleges during the budget~~
23 ~~base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to~~
24 ~~be submitted to the board of regents.~~

25 ~~(c) "Fixed cost of education" means that portion of the adjusted cost of education, as determined by~~
26 ~~the legislature, that is not influenced by increases or decreases in student enrollment.~~

27 ~~(d) "Variable cost of education per student" means that portion of the adjusted cost of education, as~~
28 ~~determined by the legislature, that is subject to change as a result of increases or decreases in student~~

1 enrollment, divided by the actual student enrollment during the budget base fiscal year."

2

3 **NEW SECTION. Section 6. Annual adjustments based on actual weighted FTE -- special**
 4 **revenue account -- statutory appropriation.** (1) There is a community college FTE adjustment account in the
 5 state special revenue fund provided for in 17-2-102. The account is statutorily appropriated, as provided in 17-
 6 7-502, to the commissioner of higher education for the purposes described in this section. ~~Any reversions from~~
 7 ~~community colleges pursuant to 17-7-142 must be deposited in the account.~~

8 (2) Beginning at the end of fiscal year 2024, at the end of each fiscal year the commissioner of higher
 9 education, utilizing the FTE decrease funding factor and the FTE increase funding factor as appropriate, shall
 10 determine the fiscal impacts resulting from the weighted FTE projections on which that fiscal year's state
 11 appropriation to a community college was based, pursuant to 20-15-310, and the fiscal impacts that would have
 12 resulted had the actual weighted FTE for that fiscal year been used to determine that fiscal year's state
 13 appropriation and shall determine any overpayment or underpayment to the community college for that fiscal
 14 year.

15 (3) The commissioner shall distribute any underpayment as determined under subsection (2) to a
 16 community college from the community college FTE adjustment account by October 15 of the current year.

17 (4) A community college receiving an overpayment determined under subsection (2) shall ~~return~~ PAY A
 18 FEE EQUAL TO the overpayment to the commissioner by October 15 of the current year for deposit in the
 19 community college FTE adjustment account.

20

21 **Section 7.** Section 20-15-312, MCA, is amended to read:

22 **"20-15-312. Calculation and approval of operating budget.** (1) Annually by September 1, the board
 23 of trustees of a community college shall submit an operating budget to the board of regents for their review. The
 24 operating budget of the community college must be financed in the following manner:

25 (a) The general fund appropriation must be determined pursuant to 20-15-310.

26 (b) The mandatory levy amount ~~must represent a specific percentage of the combined total of the~~
 27 ~~fixed cost of education and the variable cost of education, as those terms are defined in 20-15-310, and as~~
 28 ~~determined by the legislature. This percentage must be specified~~ as a percentage of the operating budget for

1 each community college by the board of trustees of the district and approved by the board of regents.

2 (c) The funding obtained pursuant to subsections (1)(a) and (1)(b) plus the revenue derived from
3 tuition and fee schedules approved by the board of regents and unrestricted income from any other source is
4 the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be
5 submitted to the board of regents for their review and approval.

6 (d) The amount estimated to be raised by the voted levy must be detailed separately in an
7 expenditure schedule.

8 (e) The spending of each restricted or designated funding source must be detailed separately in an
9 expenditure schedule.

10 (f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total
11 operating budget of the community college.

12 (2) The board of regents shall review the proposed total operating budget and all its components and
13 make any changes it determines necessary. The board of trustees of a community college district shall operate
14 within the limits of the operating budget approved by the board of regents."

15
16 **NEW SECTION. Section 8. Transition.** The legislature intends that fiscal years 2022 and 2023 be
17 governed by the current community college funding formula and that revisions to the formula in [this act] be
18 used in the appropriations process for fiscal year 2024 and thereafter. For the 2025 biennium and each
19 subsequent biennium, the community colleges shall provide FTE projections and other necessary data in order
20 to implement the changes to the funding formula as described in 20-15-309, 20-15-310, and [section 5 6].

21
22 **NEW SECTION. Section 9. Codification instruction.** [Section 5 6] is intended to be codified as an
23 integral part of Title 20, chapter 15, part 3, and the provisions of Title 20, chapter 15, part 3, apply to [section 5
24 6].

25
26 **NEW SECTION. Section 10. Effective dates – applicability.** (1) Except as provided in subsections
27 (2) and (3), [this act] is effective July 1, 2021.

28 (2) [Sections 1 and 6 7] are effective July 1, 2023.

1 (3) [Section ~~5~~ 6] is effective January 1, 2023, and applies to community college appropriations and
2 budgets for fiscal years beginning on or after July 1, 2023.

3

4 NEW SECTION. SECTION 11. TERMINATION. [SECTION 2] TERMINATES JUNE 30, 2023.

5

- END -